Supreme Court, U.S.
FILED
AUG 12 1988
JOSEPH E. SPANIOL, JR.
CLERK

No. 87-2052

In The

Supreme Court of the United States

October Term, 1987

M.E.F. ENTERPRISES, INC.
and
M.K.D. ENTERPRISES, INC.

Petitioners,

vs.

The City of Houston, et al,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

JACK R. BURNS
500 - 108th Ave. N.E., #770
Bellevue, WA 98004
(206) 646-6546

Attorney for Petitioners

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

ADDITIONAL REASON FOR GRANTING THE WRIT

The Decision Below Is In Direct Conflict With The Decision In *Frisbee v. Schultz*, 108 S.Ct. 2495 (1988) Which Requires That An Ordinance's Regulations Target And Eliminate No More Than The Exact Source Of The Evil They Seek To Remedy.

In *Frisbee v. Schultz*, ___ U.S. ___, 108 S.Ct 2495 (1988), this Court said that "[a] statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." In contrast, the Court below held that "an ordinance is sufficiently well tailored if it effectively promotes the government's stated interest." 837 F.2d at 1276. The differences between the tests are readily apparent; i.e., the standard adopted by the Court below for measuring whether an ordinance is "narrowly tailored" is much more deferential to a governmental choice of means than is the test announced by this Court in *Frisbee*.

The test adopted by the Court below is clearly overbroad. A regulation may effectively promote the government's stated interest; yet, the regulation may not be targeted to eliminate the exact source of the evil sought to be remedied. The facts in this case present that precise situation.

In adopting Ordinance 86-323, the City Council found that "a *concentration* of sexually oriented commercial enterprises can contribute to a decline in the value of surrounding properties"[1] and that "a *concentration* of sexually oriented commercial enterprises can contribute to

---

[1] Appendix C to Petition For Writ Of Certiorari, page 61.

an increase in criminal activities in surrounding areas."[2] The effect of *concentration* was crucial to each of these findings. Inasmuch as Petitioner's businesses are not located in close proximity to other sexually oriented businesses, the effects of concentration, i.e. crime and declining property values, cannot serve as a basis for requiring the discontinuance of Petitioners' businesses.[3]

The Respondent apparently concedes that the signage regulations of the ordinance (which are not challenged) are sufficient to cure any evil associated with proximity to neighborhoods and schools; i.e., an adverse effect on minors and the deterioration of neighborhoods.[4] Inasmuch as no other finding of the ordinance would justify forcing the closure of Petitioners' existing businesses, the regulations of Ordinance 86-323 are not "narrowly tailored," because they eliminate more than the exact source of the evil sought to be remedied; i.e., the concentration of such uses.

Because of the overbreadth of the regulations and their imprecise reach, Petitioners respectfully submit that the decision of the Court below is in direct conflict with the decisions of this Court.

---

[2] Appendix C to Petition For Writ Of Certiorari, page 61.

[3] In an effort to justify the overly broad reach of the test formulated by the Court below, the Respondent ignores the City Council's crucial finding that it is the *concentration* of sexually oriented businesses that leads to the perceived evils of declining property values and criminal activities. Brief in Opposition, page 6, n.3.

[4] Brief In Opposition, pages 9-10.

CONCLUSION

For the reasons stated herein and the reasons set forth in the Petition For Writ Of Certiorari, Petitioners respectfully pray that the Writ be granted and the judgment of the Court below reversed.

Respectfully submitted,

JACK R. BURNS
Attorney for Petitioners